

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF TEXAS

United States District Court
Southern District of Texas

ENTERED

July 09, 2019

David J. Bradley, Clerk

George E. McFarland,

§
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§
§
§
§

Petitioner,

versus

Civil Action H-05-3916

Lorie Davis,

Respondent.

Order

The court denied McFarland's federal habeas petition on April 2, 2019. (21) McFarland moves to alter or amend judgment under Fed. R. Civ. Pro. 59(e). (24) McFarland says that the court's opinion should not have mentioned an affidavit the State submitted late in the state habeas process. McFarland complains that the state court did not give him an opportunity to be heard on the affidavit, but he has not shown any due process violation that requires changing the judgment.

McFarland also says that the court should not have applied deference under the Anti-Terrorism and Effective Death Penalty Act because he did not receive a full and fair hearing on the affidavit. A full and fair hearing in state court is not a prerequisite to applying AEDPA deference.¹

McFarland's Rule 59(e) motion to amend the judgment is denied. (24)

Signed on July 9, 2019, at Houston, Texas.



Lynn N. Hughes
United States District Judge

¹ Wiley v. Epps, 625 F.3d 199, 207 (5th Cir. 2010); Valdez v. Cockrell, 274 F.3d 941, 946 (5th Cir 2001).